



## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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March 31, 2006

Mr. Toby Cotter, Administrator  
Town of Richfield  
Town Hall  
4128 Hubertus Road  
Hubertus, WI 53033

Subject: Town Ordinance restricting water supply wells in water supply protection area

Dear Mr. Cotter:

The Department of Natural Resources ("DNR") recently learned that the Town of Richfield, Washington County, enacted a Town Ordinance restricting the allowable drawdown of groundwater caused by water supply wells, Ordinance No. 0-07-06 SS1, Chapter 59 Groundwater Protection, effective July 22, 2005. Under s. 280.11(1), Wis. Stats., the Department of Natural Resources ("DNR") has general supervision and control of all methods of obtaining groundwater for human consumption, including the construction or reconstruction of wells, and shall do any act necessary for the safeguarding of public health. The Wisconsin Supreme Court has ruled that issues involving water supply and the promotion and protection of public health are matters of statewide concern. City of Fond du Lac v. Empire, 273 Wis. 333 (1956) and State ex rel Martin v. Juneau, 238 Wis. 564 (1941). In the Empire case, an ordinance passed by the town board of the town of Empire, which regulated the drilling of wells in the town, was held to be invalid because the Supreme Court said the town had no authority to adopt the ordinance.

Case law and statutory law in Wisconsin establish that local units of government (such as counties and municipalities) may not adopt or enforce regulations regarding water supply issues except as specifically authorized by the Legislature (by statute) or DNR (by regulation). Under s. 280.21(1), Stats., DNR may authorize counties to adopt ordinances under s. 59.70(6)(b) and (c), relating to certain water supply issues. The only subject areas in which counties or municipalities have been authorized to enact ordinances are:

1. Well construction or pump installation requirements for private wells (s. 59.70(6), Stats., and ch. NR 845, Wis. Adm. Code).
2. Prohibition on cross-connections and requirement for well abandonment of wells located on premises served by municipal water systems (ss. NR 811.09 and 811.10, Wis. Adm. Code).

Under s. NR 845.03, Wis. Adm. Code, no entity, other than a county authorized under ch. NR 845 or a municipality with well abandonment and cross-connection ordinances approved by DNR under ch. NR 811, may adopt or enforce an ordinance regulating matters covered by ch. 280, Stats., or DNR rules adopted under ch. 280, Stats.

DNR has adopted multiple regulations governing well construction, under ch. NR 812, Wis. Adm. Code. If authorized by DNR under s. 280.21(1), Wis. Stats., a county may enact and enforce a well construction ordinance; however, provisions of the ordinance must be in strict conformity with ch. 280, Wis. Stats., and DNR rules promulgated under that statute (s. 59.70(6)(b), Wis. Stats.). Municipalities, including

towns, are specifically prohibited from enacting or enforcing an ordinance regulating matters covered by ch. 280 and related DNR rules (s. 59.70(6)(e), Wis. Stats.).

The Ordinance provides that a groundwater protection permit is required for all development of land (except for single family residences). The groundwater protection permit is necessary in order to install water supply wells. Section 59-4 (Application review procedures), paragraph (1)(a) of the Ordinance, states that “the applicant must provide proof to the satisfaction of the [Town] administrator that the drawdown at the property boundary shall not exceed one (1) foot.” Also, the applicant must provide proof that the drawdown “at any perennial stream, wetland or lake shall not exceed one-half (1/2) foot.” These requirements go beyond the Town’s authority to restrict water supply wells. They also go beyond the restrictions DNR may impose when it regulates water supply wells, since there is no authority in the statutes to limit the amount of drawdown caused by a water supply well.

Thus, the Town of Richfield had no authority to enact the Ordinance, and has no authority to enforce it. Even if Washington County had enacted an ordinance in this case, instead of the Town of Richfield, the ordinance would be invalid because its terms are not in strict conformity with ch. 280, Wis. Stats. Thus, it is clear that the Town of Richfield Ordinance regulating the construction of wells is not allowed under state law. DNR strongly recommends that the Town Board repeal the Town Ordinance as soon as possible.

Department staff is willing to work with the Town of Richfield to address any water supply issues the Town is concerned about. Please contact, Mark Putra, at (608)267-7649, if you would like to discuss this.

Sincerely,

//s//

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